UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

FLOONICS, LLC[1]

Employer

and Case 5-RC-15910

STEAMFITTERS LOCAL UNION NO. 602,
UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING
AND PIPEFITTING INDUSTRY
OF THE UNITED STATES AND CANADA, AFL-CIO[2]

Petitioner

DECISION AND DIRECTION OF ELECTION

The issues in this proceeding are: (1) whether the individuals in the petitioned-for unit are employees within the meaning of Section 2(3) of the Act, or whether they are independent contractors and/or temporary workers; (2) whether the Employer has sufficiently demonstrated a certain and imminent cessation of its operations such that the petition should be dismissed; and (3) whether the petitioned-for unit is an appropriate unit for purposes of collective bargaining.[3]

I have carefully considered the evidence and arguments presented by the parties on this issue. As discussed more fully below, I conclude as follows: (1) the individuals in the petitioned-for unit are employees of the Employer within the meaning of Section 2(11) of the Act; (2) the Employer has failed to present sufficient evidence of a certain and imminent cessation of its operations such that the Union's petition should be dismissed; and (3) the petitioned-for unit is an appropriate unit.

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[1] The Employer's name appears as amended at the hearing.
[2] I take notice of the Union's formal name.
[3] The Union amended its petition at hearing to represent the following unit of the Employer's employees for purposes of collective bargaining: "All pipefitters, fitters, welders, plumbers, and helpers" but excluding "all professional employees, office clerical employees, guards, managers and supervisors as defined in the Act." The parties stipulated that there is no history of collective bargaining.

The Petitioner presented two witnesses at the hearing, Glenfield Nicholls, pipefitter employed by the Employer at the MedImmune jobsite in Gaithersburg, MD, and James Staccho, Union Organizer for the Maryland State Pipe Trades. The Employer presented two witnesses, Javier Rodriguez, helper employed by the Employer at the MedImmune job site in Gaithersburg, MD, and Bradley Lownsbury, owner of the Employer.

FACTS

The Employer is a construction contractor in the construction industry engaged in the installation of high purity process piping systems for use in the micro electronics, pharmaceutical, fiber optic, and bio technology industries. The Employer maintains an office and warehouse in Richmond, Virginia. The Employer currently has two contracts to install high purity process piping systems, one at a site in Gaithersburg, Maryland and one in Roanoke, Virginia. The system that the Employer is constructing at the Gaithersburg, Maryland site is for MedImmune, a biotechnology firm that is engaged in the research and development of pharmaceutical products. The system that the Employer is installing at the Roanoke, Virginia site is for the transfer of pure water for the residents of the city of Roanoke, Virginia.[4]

The managerial hierarchy of the Employer is as follows: Brad Lownsbury, owner; William Lucas and Michael Marchioni, department/ project managers; Ashby Baxley, project engineer; Ray Cardona, superintendent; Bruce Wilson, foreman; and an office manager.[5] The Employer employs approximately five detailers and fourteen field employees, including orbital welders, pipefitters, and helpers. The detailers receive the design drawings from clients, such as MedImmune, and from those drawings the detailers prepare isometric drawings presenting measurements in much finer detail. From there, the drawings are conveyed to the project managers and foremen who then pass along instruction to the field employees who do the actual construction, including the

[4] The Roanoke, Virginia job is a long-term project that is ongoing at least through September 2006.

[5] The parties stipulated and I find that Lownsbury, Lucas, Marchioni, and Baxley are supervisors within the meaning of Section 2(11) of the Act. Ray Cardona is no longer employed by the Employer.

fabrication, cutting, facing, fitting, and finally welding of the pipe, according to the specifications of the detailers' schematics. Twelve of the field employees, including orbital welders, fitters and helpers, work at the Gaithersburg site. Two helpers and a supervisor work at the Roanoke job site.

The MedImmune job at Gaithersburg, Maryland commenced in about May 2005. At the time the Employer was awarded the bid, Miguel Colon was employed as the foreman for the Employer. Colon was responsible for recruiting and hiring individuals capable of performing the work. Colon hired approximately ten individuals from Puerto Rico, two from Texas, and one from North Carolina. Colon informed the workers about the nature of the work and that the job was to be completed by February 28, 2006. Although the Employer admits that it is pursuing and will continue to pursue other projects in the Mid-Atlantic area, predominantly in Virginia, none of the employees was assured that they would continue work after that project ended. The workers are paid on an hourly basis and receive no benefits.[6] In addition, the Employer paid them $350 weekly per diem as compensation for moving to the Gaithersburg area. The Employer periodically, about every three months, paid the round-trip airfare back to Puerto Rico for its workers who came from Puerto Rico. The Employer does not deduct taxes from the pay of the individuals employed in the field at either Gaithersburg or Roanoke.

The individuals employed at the Gaithersburg site work on average ten hours per day, Monday through Friday. They are each required to sign a time sheet every Monday morning verifying hours worked for the previous week. Only the foreman and superintendent are authorized to determine whether overtime will be worked in any given workweek. Each morning, the workers meet with foreman Bruce Wilson to discuss any problems on the job, and to receive work instructions for that day. Those individuals all take the same one hour lunch break from noon to 1:00 p.m. They do not have latitude with respect to work assignments and are expected to perform the work assigned to them.

The Employer provides all of the materials, as well as the more expensive equipment, including orbital welding machines, band saws, and facing tools, at the job sites. Materials are transported around the site by a work truck bearing the Employer's

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[6] Helpers at the Gaithersburg site are paid $18 per hour and receive overtime after forty hours. There is no testimony as to wage rates for other classifications.

name on the side. The Employer provides workers with safety gloves and safety glasses, as well as shirts and hard hats that have the Employer's name printed on them. The individuals employed in the field are expected to possess their own hand tools; and if they do not, the Employer has loaned certain of those individuals the money to purchase their own hand tools. At the end of each workday, workers are required to put all tools away in a gang box that has the Employer's logo on it.

ANALYSIS

A. Employee Status

Employer Position

The Employer avers that it employs in its Richmond office approximately nine full-time, permanent employees including office, managerial personnel, and detailers. The Employer argues that all the workers in the field in Gaithersburg and Roanoke are independent contractors and/or temporary workers.

Beginning in about May 2005, the Employer contends that Miguel Colon, the Employer's foreman at that time, was given the parameters of the MedImmune job and the responsibility for hiring a sufficient number of qualified workers to get the job done within an approximately nine-month period.[7] The Employer argues that the initial contacts that Colon made to the workers supports a finding of their independent contractor status. For example, when Colon contacted the individuals and described the job, he informed them that it was a nine-month project and that there was no guarantee of continued employment after that. He further informed the individuals of the hourly pay rate and the $350 weekly per diem they would receive in light of their temporary relocation. The Employer contends that the per diem paid to the "Form 1099" workers is a factor supporting its position that those workers are independent contractors because the Employer does not have such an arrangement with its permanent employees Colon also advised the individuals that the Employer would not deduct taxes from their pay and that they would not receive any other benefits. The Employer argues that it does deduct the typical withholdings from its handful of full-time employees and therefore refers to the

[7] The Employer had relied on Colon in the past as he has contacts with workers located in Puerto Rico who are apparently capable of performing the highly specialized welding associated with installing high purity systems such as those required in the pharmaceutical industry.

other the welders and helpers employed in the field as "Form 1099" independent contractors. The Employer argues that unlike the above-described, "Form 1099" workers, the Employer deducts taxes and provides various benefits for its core, full-time employees. The "Form 1099" workers at the Gaithersburg site receive periodic, about once every three months, round-trip tickets home to Puerto Rico. The Employer argues that it does not have any such arrangement with its core, permanent employees. The Employer argues that its foremen are also Form 1099/independent contractors.[8]

The Employer argues in the alternative that the field employees at the MedImmune job in Gaithersburg site are temporary employees. In support of that position, the Employer argues that the workers at the MedImmune jobsite were hired solely for that project and no other jobs. The Employer argues that all of those workers were put on notice that the job was a nine-month job. The Employer cites *E.F. Drew*, 133 NLRB 155 (1961) for the proposition that such employees should be excluded as temporaries.

Union Position

The Union contends that the facts demonstrate that the individuals employed in the field are employees within the meaning of Section 2(3) of the Act and not independent contractors. In support of that position with respect to the workers at the MedImmune job site, the Union points to the fact that the Employer dictates the hours of their work day, commencing at 7:00 a.m. and ending at 5:30 p.m. Monday through Friday. The Employer's foremen are the only ones authorized to schedule employees to work on Saturdays or to work overtime. Each morning at 7:00 a.m., prior to beginning work, workers meet with the foreman to discuss any problems, and to receive work assignments for that day. Employees are required to adhere to the safety rules set forth in MedImmune's safety manual that the Employer distributed to each of its workers upon hire.

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[8] With respect to the status of the Employer's foremen, regardless of a finding that they are supervisors, as the Union contends in brief, or independent contractors as the Employer contends, on either basis I find that they are excluded from any unit found appropriate.

As further evidence of employee status, the Union notes that the Employer provides workers with safety glasses and gloves, hard hats with the Employer's name, and all of the materials and equipment necessary to perform the work. The materials are transported wherever necessary at the site by a company truck with the Employer's logo on the side. Furthermore, at the end of each workday, employees are required to put tools away in a gang box that is on site with the Employer's logo on it.

As to the Employer's argument that these employees are temporary employees, the Union contends that these employees are construction employees and are not anymore temporary than any other construction employee.

CONCLUSION

A. Independent Contractor Status

Section 2(3) of the Act excludes from the definition of employee "any individual having the status of an independent contractor." The Supreme Court recognized that in determining independent contractor status, each case should be determined by application of general agency principles. *NLRB v. United Insurance Co.*, 390 U.S. 254 (1968). Furthermore, the party asserting independent contractor status bears the burden of establishing that status. *Community Bus Lines*, 341 NLRB No. 61 (2004). For the reasons that follow, I find that the Employer has failed to establish its burden that the individuals it hired to perform the installation of high purity piping systems are independent contractors. Rather, I find that the evidence demonstrates that those individuals are employees within the meaning of Section 2(3) of the Act.

In determining whether workers are independent contractors, the Board has long applied the common-law agency test as set forth in Section 220(2) of the Second Restatement of the Law of Agency. The factors set forth in that section include the following: the hiring party's right to control the manner and means by which the product is accomplished; the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular

business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party. *See, St. Joseph News-Press*, 345 NLRB No. 31 (2005). Both the right of control factors and the other above-enunciated factors should be considered without placing special emphasis on any one factor. Id.

With respect to the Employer's right to control the work, I find that the facts show the Employer has retained substantial control over the manner in which the individuals perform their work. Upon being hired, the employees were informed that the project at Gaithersburg would last nine months, until February 28, 2006. The employees had no control over the duration of the work. In fact, the evidence indicates that if the Employer falls behind in the schedule to complete the work by February 28, 2006, MedImmune has retained the right to end its contract with the Employer. As such, the Employer controls whether employees will work overtime and whether they will work on weekends to stay on schedule. Employees are required to report to work at a specific job site Monday through Friday by no later than 7:00 a.m. Upon reporting to work, the employees must meet with the Employer's foreman, who addresses any work or safety issues and then informs the employees of their assignments for the day. Unless authorized by the Employer to work overtime, employees are required to stop working each day at 5:30 p.m.

Although employees are responsible for providing their own hand tools, the Employer provided employees with all of the necessary materials and equipment, including safety gloves and glasses, hard hats with the Employer's logo, pipe hangers, pipe, orbital welding machines, band saws, and facing tools. At the end of each work day, employees are required to put all of the tools away in the Employer's gang box.

Likewise, the Employer controls the method of compensation, paying employees a set hourly wage. The employees have no ability to affect the amount that they are paid. They do not work for any other employer. The above factors demonstrate employees' lack of entrepreneurial control in their own employment. (Cf. *Dial-A-Mattress*, 326 NLRB 884, 891-892, is which the Board considered ability of the employer's drivers to impact their own income as one factor supporting a finding of independent contractor status.)

The record makes clear that orbital welding is a specialized skill. However, there is no testimony that those skills are learned by the individuals other than through on-the-job training. The record is devoid of any evidence to suggest that the skill and training necessary for orbital welding is any more specialized than the skill or training required in other aspects of specialized welding in the construction industry. In any event, the skill of orbital welders alone is insufficient to establish independent contractor status. Finally, there can be no disputes but that the petitioned-for workers perform functions that are not only an essential part of the Employer's operations, but are among those at the very core of its business. *Slay Transportation Co*., 331 NLRB 1292, 1294 (2000).

In sum, I find the Employer has failed to meet its burden of establishing that the disputed workers are independent contractors, rather than statutory employees. *St. Joseph News-Press; Slay Transportation; Roadway Package System*, 326 NLRB 842 (1998).

B. Temporary Employee Status

The Employer is engaged in the construction industry where work is obtained by a competitive bidding process, where its employees work at multiple sites, and where workers are hired on a project-to-project basis. As is common in the construction industry, the Employer maintains a database of individuals it has employed in the past and it will call on them as the need arises. For example, when questioned about his foreman Miguel Colon, the Employer's owner Bradley Lownsbury testified that the Employer has called Colon to work multiple jobs:

Q. How many previous jobs has Miguel performed for you?
A. For FloOnics?
Q. Yes.
A. Three, four maybe at the most. (Tr. At 140)[9]

The Board recently rejected an employer's contention that a majority of petitioned-for employees who were employed for a specific duration on a particular project should be excluded as "temporaries" on the basis that the employer was engaged

[9] Colon worked as a welder on these projects.

in operations where unusual employment patterns existed. See, *Greenhorn & O'Mara, Inc.*, 326 NLRB No. 514, n. 6 (1998). Similar to the employment pattern discussed in that case, the Employer in the instant case hires workers on a project-by-project basis. Lownsbury testified that when the Employer is awarded a bid, it selects workers from a database (Union Exhibit 3) consisting of the names and contact information of workers it has used on past jobs, as follows:

> Q. Well, you keep a list –
> A. Yes.
> Q. -- of phone numbers.
> A. Like this list, yes.
> Q. Just as you have compiled them right here, in one of the exhibits?
> A. That's correct.
> Q. And should further work come up needing orbital welders, you will contact them?
> A. That is correct.
> Q. And the company intends to stay in the business of performing that type of work, seeking that type of work, that as this job phases down, you're going to be seeking other jobs requiring the skills of orbital welding, correct?
> A. Yes. (Tr. at 191, 192)

The Board has long held that where an employer is in the practice of calling back workers, even though they are described as temporary, they are to be included in the unit. *Tol-Pac, Inc*. 128 NLRB 1439 (1960). The Employer is engaged in the construction industry where the projects are obtained by a competitive bidding process, it has employees working at different sites, and where its employees are hired on a project-to-project basis. As is common in the construction industry, the Employer, as demonstrated above, maintains a database of individuals it has employed in the past and it will call on them as the need arises. In this regard, the Employer's pattern of employment and reemployment of workers is typical of the "sporadic" employment patterns in the construction industry. See, e.g., *Steiny & Co*., 308 NLRB 1323 (1992), and cases cited herein. After examining the totality of the evidence, I find that the evidence fails to show that the petitioned-for employees are "temporary" employees, as the Board defines that term, who have no reasonable expectation of future employment. Compare *Meier & Frank Co*., 272 NLRB 464 (1984).

B. Cessation of Operations/ Contracting Unit

Employer Position

The Employer contends that the petition should be dismissed because of an imminent cessation of business operations at the MedImmune job site in Gaithersburg, Maryland. As evidence of that impending discontinuation, the Employer points to uncontradicted testimony that prior to being hired, employees were informed by foreman Miguel Colon that the job would last about nine months and that there was no guarantee of work after that project ended. The Employer also presented a chart which was apparently prepared by MedImmune that sets forth goals for completion of different phases of the project. The Employer's owner Bradley Lownsbury testified, and the chart seems to indicate, that the Employer's responsibilities at the site should be completed no later than mid-March 2006. The Employer posits that MedImmune is emphatic about the project being completed no later than the end of February 2006.

Union Position

The Union argues that the petition should not be dismissed as its petition is for all of the Employer's employees who perform the work in the field and is not limited to employees at any one geographic site or to any particular project. The Union acknowledged that the Employer's work at the MedImmune job site is scheduled to be completed by February or March 2006. The Union argues that since the Board looks to past jobs, as well as existing jobs, and future prospects for work, in determining whether the Employer is ceasing business that the factors in the instant case favor an election. The Employer, a construction industry employer, is bidding on jobs and will continue to bid on work, and its Roanoke water treatment project is scheduled to run until September 2006.[10]

Conclusion

[10] The Employer admits that the Roanoke job is a long-term project that could last into late September or early October 2006.

The Board's longstanding policy in deciding whether to conduct an election at a construction project which will be completed in the near future is contingent on whether closure or cessation of operations is certain and definite, and not merely predicted or speculative. *M.B. Kahn Construction*, 210 NLRB 1050 (1974). In that respect, the Board has also long held that although a particular project may be completed, total shutdown may not necessarily follow where other work is anticipated. *Trammel Construction*, 126 NLRB 1365 (1960).

This case is distinguishable from *Davey McKee Corp.*, 308 NLRB 839 (1992), where the Board found that as the employer's operations were scheduled to terminate within a short time after the election, the union's petition should be dismissed. Contrary to the facts in that case, the facts in the instant case demonstrate that the Employer has ongoing projects, including a long term project in Roanoke, Virginia, lasting at least until September 2006. Perhaps more importantly, it is undisputed that the Employer fully intends to continue its operations in the Maryland-Virginia area; currently has pending bids for additional work in the area; and is looking for additional projects in the area on which to bid.[11] In these circumstances, an immediate election is appropriate. *Fish Engineering & Construction*, 308 NLRB 836 (1992).

C. Appropriateness of unit

Employer Position

The Employer argues that the petitioned-for unit is an inappropriate unit for several reasons. The Employer argues that the unit description does not accurately identify the classifications of workers or the nature of work that is being performed at the MedImmune job site. The Employer asserts that it does not employ any individuals classified as pipefitters, fitters, welders, or plumbers as petitioned-for by the Union. Rather, the Employer asserts its field employees are classified as orbital welders and helpers. The Employer argues that the MedImmune job is a research and development job and that the work of the welders is so highly technical and specialized, they should be separated out from any unit that includes helpers. The Employer also argues that the

[11] The Employer admitted, for example, that it has a bid out for the DI Retrofit Project at Jefferson Labs in Newport News, VA. The Employer also admitted that it has been engaged in ongoing discussions regarding work in Loudon County for a company called Frutea.

petition itself is faulty in that the Employer does not employ workers who fit the traditional notions of pipefitters, fitters, welders, plumbers, and helpers. Rather, the individuals working on the job are highly specialized and trained in welding tubing for high purity systems installations.

The Employer also argues that there is no community of interest between the workers at the Gaithersburg, Maryland and Roanoke, Virginia job sites. As its primary evidence of that, the Employer elicits testimony demonstrating that there is no interchange or contact among employees of the two job sites. There is no transfer of employees between the sites, and owner Lownsbury is the only individual who travels to both sites.

Union Position

The Union simply argues that its petition is not limited to a specific geographic area and that it essentially includes all of the Employer's workers who actually perform the work of installing high purity piping systems in the field. The Union further argues that there is no reason to sever helpers from welders, as all of the workers operate as an integrated group. Although the systems being installed at the work sites in Gaithersburg and Roanoke differ in purpose, the former being implemented for pharmaceutical purposes and the latter being implemented as a conduit for clean water for the city of Roanoke, both systems require the fabrication, cutting, fitting, and welding of tubes used in high purity systems. Likewise, the testimony revealed that workers at the two sites receive similar pay.

Conclusion

The Board has long held to the principle that there is nothing in the Act which requires that the petitioned-for unit for be the only appropriate unit, or the ultimate unit, or the most appropriate unit. The Act requires only that the unit be an appropriate unit. *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enfd. 190 F. 2d 576 (7th Cir. 1951). The Board has also long held presumptively appropriate a petition that includes an employer-wide unit. *Greenhorne & O'Mara, Inc.*, 326 NLRB 514 (1998).

Although the Employer is engaged in installing two different high purity piping systems at the Gaithersburg and Roanoke job sites, the skills of the workers are very similar. The workers at those two sites share the same job classifications, similar wage rates, and the lack of benefits. Likewise, the workers share the same high level of supervision by owner Lownsbury, who makes frequent visits to both sites, along with detailers and engineers who provided technical support.

It is the Employer's burden to establish that the petitioned-for, employer-wide unit is inappropriate. The record evidence in this case is insufficient to rebut the presumptive appropriateness of the petitioned-for unit. Although each jobsite is a separate project, there is no evidence that skills, duties, or working conditions vary from project to project. Furthermore, and contrary to the Employer's assertions, the similarities in the workers skills, as well as their terms and conditions of work as discussed above, demonstrates that there is a community of interest shared by the field employees justifying an all-inclusive unit. *Fish Plant Services*, 311 NLRB 1294, 1297 (1993).

I further find that the Employer has failed to demonstrate that any of its field employees are technical employees, and therefore reject the Employer's argument regarding not including helpers and orbital welders in the same unit. Although orbital welding may be a difficult skill to acquire, the testimony shows that it is a skill that is acquired through on-the-job training and that it is not necessary to attend technical schools or take any special courses to attain that that skill. *See, Folger Coffee Co*., 250 NLRB 1 (1980); *Augusta Chemical Co.*, 124 NLRB 1021 (1959).[12] Rather, I find that

[12] Although I find that the evidence is insufficient to show that orbital welders should be considered technical employees, I note that even had my finding been otherwise, merely labeling a certain group of employees as technical employees does not automatically exclude them from a petitioned-for unit of non-technical employees. *See, Sheffield Corp.*, 134 NLRB 1101, 1103-1104 (1962), where the Board set the following considerations regarding whether to include or exclude technical employees: (a) bargaining history, (b) common supervision, (c) similarity of skills, (d) contacts or interchange with other employees, (e) type of industry, (f) location of employees; (g) the desires of the parties, and (h) whether any union seeks to represent the technical employees separately. See also, *Virginia Mfg. Co.*, 311 NLRB 992 (1993). Applying those considerations to the instant case, the evidence still favors a finding that orbital welders be included in an appropriate unit: there is no history of collective bargaining; the orbital welders and helpers share common supervision at each jobsite and there is common higher level supervision of both current jobsites; orbital welders and helpers are working side-by-side to install the high purity piping systems, and there is even testimony that when necessary, helpers at

the petitioned-for unit is a classic construction industry craft unit, which appropriately includes the craft employees' helpers and apprentices. See, e.g., *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994).

ELIGIBILITY FORMULA

The Board held in *Steiny & Company, Inc.*, 308 NLRB 1323 (1992), that the *Daniel* formula is applicable in all construction industry elections, unless the parties stipulate to the contrary. See also *Signet Testing Laboratories*, 330 NLRB No. 104 (1999). Here, the parties did not stipulate that the *Daniel/Steiny* formula should not be applied. Accordingly, I find that the *Daniel* formula, as set forth below, is the appropriate eligibility formula to be applied in this case.

The *Daniel* formula to determine eligibility of employees in the construction industry provides that, in addition to those eligible to vote under the traditional standards, laid-off unit employees are eligible to vote in an election if they were employed by the Employer for 30 working days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment by the Employer in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. Of those eligible under this formula, any employees who quit voluntarily or had been terminated for cause prior to the completion of the last job for which they were employed are excluded and disqualified as eligible voters. *Daniel Construction Co.*, 133 NLRB 264, 267 (1961), modified 167 NLRB 1078 (1967), reaffirmed and further modified in *Steiny & Company, Inc.*, 308 NLRB 1323 (1992), overruling *S.K. Whitty & Co.*, 304 NLRB 776 (1991).

CONCLUSIONS AND FINDINGS

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the MedImmune jobsite are skilled to perform the work of the welders; although there is little to no contact or interchange between employees at the different jobsites, within each site, all employees work closely with one another and even take the same breaks with one another; the petitioned-for employees all work in the same general geographic area; and, the Employer admits that its future work will predominantly be located in Virginia. In either case, whether orbital welders are or are not technical employees, the record support a finding that they should be included in the unit.

Based upon the entire record in this matter and in accordance with the discussion above, the Employer's motion to dismiss the petition is dismissed and I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.[13]

2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. Petitioner, Steamfitters Local Union No. 602, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, a labor organization as defined in Section 2(5) of the Act, claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated that FloOnics, LLC, a Virginia corporation, is engaged in the business of ultra high purity systems installation, which is the installation of clean systems tubing for the use in manufacturing of drugs. During the past 12 months, a representative period, the Employer purchased and received at its Richmond, Virginia location, products, goods and materials valued in excess of $50,000 directly from points located outside the State of Virginia.

[13] The Petitioner requested reconsideration of the Hearing Officer's ruling rejecting the admission into evidence of the independent contractor agreement that was developed by the Employer after the petition was filed herein. After due consideration of that document, I have decided to reverse the Hearing Officer's ruling and Union Exhibit 5 is entered into evidence. Although none of the petitioned-for employees signed the post-hoc independent contractor agreement, the prior absence of such an agreement and even its terms is not irrelevant to the proceeding, for whatever weight it may be accorded.

6. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All field employees employed by the Employer excluding foremen, detailers, project managers, project engineers, office clericals, guards, and supervisors as defined by the Act.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **November 23, 2005**. The request may not be filed by facsimile.

(SEAL) WAYNE R. GOLD

Dated: November 9, 2005

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
103 S. Gay Street
Baltimore, MD 21202